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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**IN RE: MIDLAND CREDIT
MANAGEMENT, INC.,
TELEPHONE CONSUMER
PROTECTION ACT LITIGATION**

Case No. 11-md-2286-MMA (MDD)
Member cases: 10-cv-02261
10-cv-02600
10-cv-02368
10-cv-02370

**CLASS ACTION
PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND
CERTIFICATION OF
SETTLEMENT CLASS**

Date: December 8, 2015
Time: 2:00 p.m.
Courtroom: 3A
Judge Michael M. Anello

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I. INTRODUCTION

Plaintiffs Christopher Robinson, (“Robinson”), Eduardo Tovar (“Tovar”), and Dave Scardina (“Scardina”) (collectively “Plaintiffs”), move for preliminary approval of a proposed settlement (the “Settlement”) of this action (the “Litigation”), which is unopposed by defendants Midland Funding, LLC (“Midland Funding”), Midland Credit Management, Inc. (“MCM”), and Encore Capital Group, Inc. (“Encore”) (collectively referred to as “Defendants”).¹ The terms ² of the Settlement are set forth in the Settlement Agreement and Release (hereinafter the “Agreement”) attached as Exhibit 1 to the Declaration of Douglas J. Campion In Support of Motion for Preliminary Approval (“Campion Decl.”) filed herewith.

The Settlement provides the following benefits to the Class:

1. \$13,000,000 Credit Component, with pro rata credits to be credited to the Approved Claimants with outstanding balances on their present collection accounts with Defendants, reducing the amounts owed to Defendants.
2. \$2,000,000 Cash Component, with pro rata cash payments to be paid to the Approved Claimants that either never had a collection account with Defendants, or if they did, they presently have a zero balance.
3. All costs of Notice and Claims Administration presently estimated to be between \$3,098,608 and \$3,352,407, based on estimated claims rates of 1% and 5%, respectively, paid by Defendants. Administration costs include the cost of direct-mail Postcard Notice to approximately 6,156,500 persons, publication and internet banner notice to the remainder of the Settlement Class, estimated to be an additional 35 million persons.
4. Attorneys’ fees and costs of litigation to be paid by Defendants to Plaintiffs’ counsel, subject to Court approval, in the amount of up to \$2,400,000.

Thus, the Settlement has a value of at least \$20 million.

¹ Plaintiffs and Defendants are referred to collectively as “the Parties”.

² Unless otherwise specified, defined terms used in this memorandum are intended to have the meaning ascribed to those terms in the Agreement.

1 The Settlement, which was negotiated over a period of thirty months, resulted
2 from approximately eleven mediation sessions with Judge Herbert Hoffman (Ret.),
3 additional negotiations between the Parties, informal discovery and formal
4 confirmatory discovery, including interrogatories, document requests and a Rule
5 30(b)(6) deposition.

6 While Plaintiffs are confident of a favorable determination on the merits,
7 they have determined that the proposed Settlement provides significant benefits to,
8 and is in the best interests of, the Settlement Class. Plaintiffs also believe that the
9 Settlement is appropriate in light of the expense and time required to pursue the
10 Litigation, as well as the uncertainty, risk, and difficulties of proof inherent in
11 prosecuting claims like those asserted by Plaintiffs. Similarly, as evidenced by the
12 Agreement, Defendants believe they have substantial and meritorious defenses to
13 Plaintiffs' claims, but nonetheless have determined that it is desirable to settle the
14 Litigation on the terms set forth in the Agreement.

15 Accordingly, Plaintiffs move the Court for an order preliminarily approving
16 the proposed Settlement as fair, adequate and reasonable, and within the range of
17 possible final approval and provisionally certifying the Settlement Class pursuant
18 to Federal Rule of Civil Procedure 23(b)(3) for settlement purposes. Plaintiffs seek
19 confirmation that previously appointed Plaintiffs' Interim Co-Lead Counsel may
20 continue to serve as Co-Lead Counsel for the Class for settlement purposes.
21 Plaintiffs seek Court approval of the Notice program, and that it constitutes the best
22 notice practicable under the circumstances, and satisfies due process, Rule 23, and
23 other applicable law. Lastly, Plaintiffs seek an Order setting the date and time for
24 the Final Approval Hearing, and setting Claims, Objection and Opt-Out deadlines.

25 **II. STATEMENT OF FACTS**

26 **A. Factual Background**

27 Defendants or their subsidiaries were at all relevant times, and in particular
28 between November 2, 2006 through August 31, 2014, inclusive (the "Class

Period”), involved or engaged in the business of purchasing debts owed, or allegedly owed by consumers, and attempting to collect them. In this suit, Plaintiffs allege that, in their efforts to collect debts from consumers, Defendants violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, (“TCPA”), by calling cellular telephones without “prior express consent,” using an “automatic telephone dialing system” and/or using an “artificial or prerecorded voice,” and that Plaintiffs are entitled to statutory damages. Defendants have denied and continue to deny that they violated the TCPA.

B. Proceedings to Date

On November 2, 2010 and December 17, 2010 respectively, Plaintiffs Robinson and Tovar filed actions against Defendants in this Court. On May 11, 2011, Plaintiff Scardina filed an action against Defendants in the United States District Court for the Northern District of Illinois. The complaints in all three actions alleged that Defendants violated the TCPA. *Campion Decl.* ¶ 2.

On October 11, 2011, Plaintiffs’ actions were transferred to this Court for coordinated or consolidated pretrial proceedings. (Dkt. No. 1.) On March 13, 2012, the Court appointed Interim Co-Lead Counsel and Liaison Counsel. (Dkt. No. 21.) On July 11, 2013, Plaintiffs filed a Consolidated Complaint (Dkt. No. 23) which Defendants answered on August 17, 2012. (Dkt. No. 27.) On December 3, 2012, Defendants filed a Motion to Stay on Primary Jurisdiction Grounds (Dkt. No. 40) which, after briefing and oral argument, the Court denied on January 7, 2013. (Dkt. No. 45.) *Id.* ¶ 3. Subsequent to that ruling, the Parties began protracted settlement discussions with the assistance of mediator Judge Herbert B. Hoffman (Ret.) of Judicate West, resulting in a settlement, approximately thirty months later. *Id.*

C. Consent Order

On September 9, 2015, the U.S. Consumer Financial Protection Bureau (“CFPB”) entered a consent order (“Consent Order”), 2015-CFBB-0022, with, *inter alia*, the Defendants in this case, MCM, Midland Funding and Encore. The

1 Consent Order requires Defendants to cease and desist in certain practices relating
 2 to their debt collection practices. After investigation, Plaintiffs' counsel have
 3 concluded that the Consent Order will have little or no impact on the settlement
 4 because Defendants have represented the accounts of identified class members in
 5 the Notice List total only 11,557 out of the 6,156,500 identified class members are
 6 affected by the Consent Order (.0018772029%). Campion Decl. ¶ 22.

7 **III. THE SETTLEMENT**

8 **A. THE CLASS.**

9 **1. The Definition Of The Settlement Class.**

10 The terms "Class", "Class Members", or "Settlement Class" are defined in
 11 the Agreement, § 2.10 (a), as follows:

12 The Settlement Class consists of all persons in the United States who
 13 were called on a cellular telephone by Defendants or their
 14 subsidiaries, affiliates or related companies (other than calls made by
 15 Asset Acceptance LLC, Atlantic Credit & Finance, Inc. or Propel
 16 Financial Services) in connection with the collection of an alleged
 17 debt using a dialer or by artificial or prerecorded voice message
 without prior express consent during the period from November 2,
 2006 through August 31, 2014, inclusive.³

18 There are a total of approximately 41 million persons in the Settlement
 19 Class, with approximately 6,156,500 persons in the Settlement Class that have been
 20 identified as members of the Class that will be mailed personal, direct mail Notice
 21 as detailed below. Agreement, §8.04. Telephone numbers that may have been used
 22 by the approximately 41 million persons in the Settlement Class are listed in a
 23 searchable database containing every cell phone number called by Defendants
 24 during the Class Period ("the Cellphone Number List") to be provided to the
 25 Claims Administrator. Agreement, §§8.03-8.04. The method of determining Class
 26 membership and those getting Direct Mail Notice was confirmed by Plaintiffs'

27 ³ Excluded from the Settlement Class are the Judges to whom this Litigation is
 28 assigned, any member of the Judges' staffs and immediate families, and any person
 who validly requests exclusion from the Class. Agreement, §2.10 (b).

counsel as sufficient during the confirmatory discovery process. *Campion Decl.* ¶¶ 11, 13, 21. Also as part of the Settlement process, and as part of the confirmatory discovery process, an independent third party, CompliancePoint, was hired to analyze that entire database of numbers to confirm 1) the number of numbers on the list, and 2) how many of the called numbers were in fact cellphone numbers. Agreement, § 5.04. (The cost is to be paid for by Defendants as part of the cost of Claims Administration.) CompliancePoint's report confirmed that there were 41,892,483 numbers but of that amount, 172,021 were not cellphone numbers, reducing the number of cell phone numbers on their list to approximately 41,720,462, a number within less than 1% of the number represented by Defendants as having been called. *Campion Decl.* ¶ 12. Therefore, Plaintiffs' counsel are satisfied that the number of cellphones called that make up the Class is accurate.

2. The Two Categories Of Settlement Class Members.

The Settlement Class consists of two categories of persons: 1) Persons who were called by Defendants and can be identified from Defendants' records ("the Direct Mail Notice Group"); and 2) persons who were called by Defendants who cannot be identified from Defendants' records ("the Publication Notice Group"). The category in which any Settlement Class Member falls depends on whether Defendants' records identify them by name and address.

a. The Direct Mail Notice Group.

Based on Defendants' records, there are approximately 6,156,500 members of this group and they will all be mailed personal, direct mail Notice. Agreement, §§ 2.26; 8.03-8.04; *Campion Decl.* ¶¶ 10, 12. The number of Settlement Class Members on the Notice List (the list of persons receiving direct-mail notice) was confirmed in written confirmatory discovery responses and in a confirmatory discovery Rule 30(b)(6) deposition. *Campion Decl.*, ¶¶ 13, 21.

b. The Publication Notice Group.

1 The second category of persons in the Settlement Class contains of persons
 2 called by Defendants who are not on the Notice List. This group consists of
 3 Settlement Class Members for whom Defendants do *not* have a record that
 4 identifies them as receiving a call on a cell phone. These Settlement Class Members
 5 may or may not have, or had, any accounts with Defendants. Agreement, §2.06.
 6 There are approximately 35,279,415 such cellphone numbers on that list. The
 7 persons that own or have owned those numbers called during the Class Period will
 8 receive notice of the Settlement by Internet and Publication Notice. The amount of
 9 cellphone numbers called in this group was also confirmed in written confirmatory
 10 discovery responses and in a confirmatory discovery Rule 30(b)(6) deposition.
 11 Campion Decl., ¶¶ 10-13, 21. Therefore, Plaintiffs' counsel are satisfied with the
 12 process of determining Class membership and the number of Class members.

13 **B. Cash and Credit Settlement Fund.**

14 Under the Settlement, Defendants agree to pay or give credits to existing
 15 accounts in an amount of \$15,000,000 to settle this lawsuit. That amount consists of
 16 a \$2 million Cash Component and a \$13 million Credit Component.

17 **1. The Cash Component Of The Settlement Fund.**

18 The Cash Component of the Settlement Fund is chiefly for those Settlement
 19 Class Members who do not owe, or who do not believe they owe, Defendants any
 20 money. Agreement, §§ 5.02, 11.03. Each Settlement Class Member eligible to
 21 receive a share of the Cash Component of the Settlement Fund will receive a *pro*
 22 *rata* share; the amount of each Settlement Class Member's recovery will depend on
 23 the number of valid cash component claims that are submitted. There is no
 24 minimum or maximum amount that any Settlement Class Member is entitled to
 25 receive. Agreement, § 5.02. The Cash Component is less than the Credit
 26 Component because the group to be covered by the Cash Component is estimated
 27 by Defendants to be approximately 10% of the persons on the Notice List.
 28 Campion Decl., ¶ 5. In addition to payments to Settlement Class Members, the

Cash Component will pay incentive payments to Plaintiffs (\$2,500 each for a total of \$7,500), and if necessary the fees and costs of a Special Master for any mediation services required in connection with the administration and implementation of the Settlement. Any portion of the \$2 million Cash Component of the Settlement Fund from uncashed checks will be donated to one or more approved *cy pres* recipients. *Id.*; Agreement, §§ 5.02, 8.08, 11.04.

2. The Credit Component Of The Settlement Fund.

The Credit Component of the Settlement Fund is for those Settlement Class Members who Defendants believe have existing balances on one or more accounts for which Defendants are attempting to collect. Agreement, § 5.01. Each Settlement Class Member eligible to receive a share of the Credit Component of the Settlement Fund will receive a *pro rata* share of the Credit Component, the amount of which will depend on the number of approved Credit Component claims. *Id.* The recovery will be in the form of a credit on the account on which money is owed by the Settlement Class Member receiving a Credit Component amount. If such a Settlement Class Member has more than one account, the credit will go to the account with the smallest balance. *Id.* If the balance on the account with the smallest balance is less than the *pro rata* account credit, then the remaining portion of the credit will be applied to the account with the next highest balance. *Id.* If the amount of the *pro rata* account credit exceeds the balance of all of a Settlement Class Member's accounts, he or she is not entitled to any cash payment. *Id.* In determining whether a claimant has an outstanding balance on an account, Defendants may, but are not required to, disregard any amounts owed to Defendants for which Defendants have determined that they will not pursue collection efforts within a reasonable time. *Id.*

3. Payment of Costs of Notice and Claims Administration.

The Agreement requires Defendants to pay separately for all costs of Direct Mail Notice and Publication Notice and Claims Administration, and that estimate is

1 between \$3,098,608 and \$3,352,407, based on estimated claims rates of 1% to 5%.
 2 Agreement, §§ 8.06 – 8.07; Campion Decl. ¶ 7. Defendants’ payment of
 3 administration costs is a value to the Class because otherwise those costs would be
 4 paid by and deducted from the Settlement Fund.

5 **4. Payment of Attorneys’ Fees and Costs of Litigation to**
 6 **Plaintiffs’ Counsel.**

7 In addition, Defendants agree to pay attorneys’ fees and costs of litigation to
 8 Plaintiffs’ counsel, subject to Court approval, in the amount not to exceed
 9 \$2,400,000. Agreement, §§ 5.05, 6.01. That, too, is a value to the Settlement Class
 10 as otherwise counsel would be seeking payment of fees and costs from the
 11 Settlement Fund. Thus, the Settlement has a value of at least \$20 million.

12 **C. The Class Notice**

13 As detailed in the “Settlement Notice Plan”, Exhibit E to the Agreement, the
 14 Notice Plan to be administered by the Claims Administrator includes direct mail
 15 notice, publication of the notice in national consumer publications, internet banner
 16 ads strategically placed to maximize the dissemination of the Notice, a dedicated
 17 Settlement Website, a long form notice substantially in the form of Exhibit B to the
 18 Agreement, which, *inter alia*, will be posted on the Settlement Website, a press
 19 release, and a toll-free number to call to obtain more information about the
 20 Settlement. *See* Agreement, §§ 9.03-9.07 and Exhibits B, D-F to the Agreement and
 21 KCC’s Declaration of Daniel Rosenthal Re Settlement Notice Plan and Notice
 22 Documents, ¶¶6-11 (“Rosenthal Decl.”) filed herewith.

23 This Settlement Notice Plan has been developed by the Claims Administrator
 24 KCC based upon their many years of experience. Agreement, Ex. E, Rosenthal
 25 Decl. Notice of the Settlement will be disseminated by the forms of notice
 26 determined to best reach both the identified persons who are receiving Direct Mail
 27 Notice and the persons who will receive Publication Notice only. *See* analysis in the
 28 Settlement Notice Plan; as developed the notice is anticipated to reach

1 approximately 75.2% of likely Settlement Class members, on average 1.8 times
2 each. *See* Agreement, Exhibit E, pp. 5-10; Rosenthal Decl. ¶ 28.

3 KCC will provide individual notice via direct mail by a Postcard Notice to
4 the approximately 6,156,500 Direct Mail Notice Class Members. Agreement,
5 §9.01, Exhibit C, Exhibit E at 11; Rosenthal Decl. ¶ 17. That postcard Notice
6 summarizes the terms of the Settlement, instructs how to make a claim, how to opt
7 out or object, and directs the recipient to a toll-free telephone number and a
8 website, www.____.com, to obtain more information about the Settlement.
9 Agreement, Exhibit C. Before mailing the postcard Notice, the Claims
10 Administrator will obtain updated addresses from the United States Postal Service's
11 National Change of Address database. To attempt to further reach the Class
12 Members, the Claims Administrator will re-mail notices that are returned as
13 undeliverable that contain a forwarding address and will undertake a reasonable
14 search to locate current addresses for persons whose notices are simply returned
15 undeliverable. Agreement, § 9.01. Rosenthal Decl. ¶¶ 17-18.

16 Publication Notice of the Settlement will be disseminated pursuant to the
17 Settlement Notice Plan developed by KCC, Exhibit E; Rosenthal Decl. ¶¶ 19-22.
18 That notice will include the publication and internet banner notice, all intended and
19 calculated to reach the approximately 35 million persons whom Defendants called
20 but whose identities are unknown. Notice of the Settlement will be disseminated in
21 national consumer publications including Cosmopolitan, People, Reader's Digest
22 and National Geographic, which have adult audiences ranging from over 16 million
23 persons (Cosmopolitan) to over 42 million persons (People). *Id.*, *see* Agreement,
24 Exhibit E, pp. 12-13. A press release will be issued and disseminated to further
25 disseminate notice of the Settlement and to facilitate internet searches about the
26 Settlement. *See* Agreement, Ex. F. As set forth in Exhibit E, Settlement "Notice
27 Plan" prepared by KCC, pp. 5-10 and the Rosenthal Decl. ¶ 28, KCC's Notice Plan
28 is expected to reach 75.2% of Class Members, on average 1.8 times each. That is

sufficient to meet Ninth Circuit requirements, as detailed below.

D. The Claims Process.

1. Filing a Claim.

Settlement Class Members shall have 90 days from the beginning of the notice period to submit claims. Agreement, § 7.02. A claim can be submitted by calling a toll-free number, submitting a claim online at the Settlement Website, or by submitting a completed Claim Form that is downloaded from the Settlement Website to the Claims Administrator by mail or otherwise. Agreement, § 10.02. Settlement Class Members can submit only one claim regardless of the number of accounts they may have or regardless of the number of times they were called by Defendants. Agreement, §§ 10.01, 10.03. If any person believes they were called by Defendants, but are not identified in Defendants' records and therefore did not receive a Notice Postcard, they can easily check with the Claims Administrator to determine if their cell phone number is on the Cell Phone Number List. Agreement, § 10.03. If it is, they can make a claim, as detailed below.

A person is deemed an "Approved Claimant" by the Claims Administrator if he or she submits a claim and is either (1) a person who received the Postcard Notice with a Claim Identification number; or (2) a person who did *not* receive Direct Mail Notice but his or her cell phone number was called by Defendants and the cell phone number is contained on the Cell Phone Number List, the list of all the numbers called by Defendants during the Settlement Class Period. *Id.* By filing a claim, the claimants are acknowledging that they were called without consent, as per the claim instructions.

2. Determining if the Claim is a Cash Component or Credit Claim.

If an Approved Claimant has no existing account with Defendants, that Claimant will receive a portion of the Cash Component, on a pro rata basis. Agreement, §§10.03; 11.02. In order to determine which claims are to be included

1 in the Cash Component Group or the Credit Component Group, the Claims
 2 Administrator will provide the Defendants with the Approved Claims as received
 3 on a rolling basis during the Claims Period. The Defendants will then determine
 4 from their records whether the Approved Claimants have an existing account with
 5 Defendants and will so advise the Claims Administrator as expeditiously as they are
 6 able, with the goal of expediting the claims process and the Court approval process
 7 by having the analysis as complete as possible by the end of the Claims Period. If
 8 there is an existing account for the Approved Claimant, that Approved Claimant
 9 will receive a credit from the Credit Component portion, on a pro rata basis.

10 **3. Notification of Credit Component Group Members and** 11 **Opportunity to Contest Inclusion.**

12 The Claims Administrator will notify by mail each of the Credit Component
 13 Approved Claimants and advise them that Defendants have an existing account for
 14 them, that they will be receiving a credit, and the approximate range of the
 15 estimated amount of such credit. Agreement, § 11.03. That notice will also advise
 16 the Approved Claimant that he or she may dispute whether he or she owes money
 17 to Defendants, and the deadline by which to communicate that dispute. Agreement,
 18 § 11.03. Any Approved Claimant who fails to contest the receipt of an account
 19 credit within the applicable time period (14 days from the date of mailing of the
 20 Claims Administrator's letter) shall be conclusively determined to be entitled to a
 21 pro rata share of the Credit Component, and not a share of the Cash Component, of
 22 the Settlement Fund. Any Approved Claimant who, within the 14 day period, avers
 23 in good faith that they do not believe they have an existing account with Defendants
 shall receive a *pro rata* share of the Cash Component. Agreement § 11.03.

24 **E. Opportunity to Opt Out and Object.**

25 Settlement Class members have the right to opt out of the Settlement Class or
 26 to object to the terms of the Settlement. Agreement, §§ 12.01, 12.02. The Direct
 27 Mail Notice, the Q & A Notice on the Settlement Website, and information
 28

1 available by calling the Toll-Free Number, will inform Settlement Class members
2 of these rights. Agreement, Exs. B and C.

3 **F. Scope of Release.**

4 Settlement Class Members (those who do not opt-out of the Settlement)
5 release claims related to calls using an “automatic dialing system or an “artificial
6 or prerecorded voice” as asserted in the Consolidated Complaint Agreement , §
7 16.01.⁴ The release also covers “any and all provisions, right and benefits, which
8 [Plaintiffs and the Settlement Class] now have or in the future may be conferred to
9 them by section 1542 of the California Civil Code.” Agreement, § 16.02.

10 **G. Termination of Settlement.**

11 If more than 7,500 persons opt-out of the Settlement Class, then Defendants,
12 in their sole discretion, have the right to terminate the Settlement. Agreement,
13 §17.02. In addition, if the Settlement is not finally approved by the Court or is
14 materially modified in the course of approval proceedings, the Parties have the right
15 to unilaterally terminate the Agreement. Agreement, § 17.01.

16 **H. Payment of Notice and Administrative Costs by Defendants.**

17 The Agreement provides that Defendants shall pay all costs of notice and
18 administration of the Settlement. The estimated costs of Direct Mail Notice and
19 establishing the claims administration procedures are to be deposited by Defendants
20 into the Settlement Fund Account administered by the Claims Administrator, KCC,

21 ⁴ "Released Claims" means “any and all liabilities, claims, causes of action,
22 damages, penalties, costs, attorneys’ fees, losses, or demands, whether known or
23 unknown, existing or potential, suspected or unsuspected, which were asserted in
24 the Action or are related to the claims asserted in the Action, any and all claims
25 relating to the making, placing, dialing or initiating of calls using an automatic
26 telephone dialing system or artificial or prerecorded voice, and all claims for
27 violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 and the
28 regulations promulgated thereunder or related thereto, and any and all claims for
violation of any laws of any state that regulate, govern, prohibit or restrict the
making, placing, dialing or initiating of calls using an automatic telephone dialing
system, an artificial or prerecorded voice, or any automated process or technology.”
Agreement, § 16.01.

1 shortly after Preliminary Approval and the remainder paid monthly, with all costs
2 paid no later than two weeks after the Effective Date. Agreement, § 8.06, 8.07.

3 **I. Class Representatives' Incentive Awards.**

4 The Settlement contemplates payment of \$2,500 each to the three Class
5 Representatives, subject to Court approval. Agreement, §§ 6.02-6.03. Defendants
6 have agreed not to oppose a request for payment of such amounts. *Id.*

7 **J. Attorneys' Fees And Litigation Expenses.**

8 Subject to the Court's approval, the Settlement contemplates, and
9 Defendants agree not to oppose, an award of attorneys' fees and litigation costs of
10 up to \$2,400,000 to be paid separate and apart from the Settlement Fund.
11 Agreement, §§5.05; 6.01; Campion Decl. ¶23.

12 **K. Cy Pres Distribution.**

13 Any checks distributed from the Cash Component of the Settlement Fund
14 which remain uncashed 180 days after they are issued shall be distributed to one or
15 more *cy pres* recipients chosen by Settlement Class Counsel, agreed to by
16 Defendants, and approved by the Court. Agreement, §§ 8.08, 11.04.

17 **IV. ARGUMENT**

18 **A. Legal Standards for Preliminary Approval of a Class Action
19 Settlement**

20 A class action may not be dismissed, compromised or settled without the
21 approval of the court. Fed. R. Civ. Proc. 23(e). As described in the *Manual for*
22 *Complex Litigation* (Fourth) (Fed. Judicial Center 2004) ("*Manual*") § 21.63, *et*
23 *seq.*, Rule 23 prescribes defined procedures and criteria for settlement approval in
24 class action settlements, including preliminary approval, dissemination of notice to
25 class members, and a fairness hearing. *Manual*, §§ 21.632, 21.633, 21.634.

26 The purpose of the Court's preliminary evaluation of a settlement is to
27 determine whether it is within the "range of reasonableness," and, thus, whether
28 disseminating notice to the class and scheduling a formal fairness hearing is
merited. *See* 4 Herbert B. Newberg, *Newberg on Class Actions* § 11.25 *et seq.*, and

§ 13.64 (4th ed. 2002 and Supp. 2004). Preliminary approval does not require the Court to make an in-depth and final determination that a settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. *See* 5 James Wm. Moore, *Moore's Federal Practice – Civil* § 23.165[3] (3d ed.). Thus, in considering a potential settlement, the Court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, *West Va. v. Chas. Pfizer & Co.*, 440 F.2d 1079, 1086 (2d Cir. 1971), and need not engage in a trial on the merits. *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

The decision to approve or reject a proposed settlement “is committed to the sound discretion of the trial judge[.]” *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). This discretion is to be exercised “in light of the strong judicial policy that favors settlements, particularly where complex class action litigation is concerned,” because settlements minimize potentially substantial litigation expenses for both sides and conserves judicial resources. *See Linney v. Cellular Alaska P'ship*, 151 F. 3d 1234, 1238 (9th Cir. 1998) (quotations omitted); *Utility Reform Project v. Bonneville Power Admin.*, 869 F. 2d 437, 443 (9th Cir. 1989). *Officers for Justice*, 688 F.2d at 625. As a result, courts should exercise their discretion to approve settlements “in recognition of the policy encouraging settlement of disputed claims.” *In re Prudential Sec. Inc. Ltd. Partnerships Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995).

Preliminary approval of the settlement should be granted if there are no “reservations about the settlement, such as unduly preferential treatment of class representatives or segments of the class, inadequate compensation or harms to the classes, the need for subclasses, or excessive compensation for attorneys.” *Manual*, § 21.632, at 321.

Furthermore, the opinion of experienced counsel supporting the settlement is entitled to considerable weight in deciding whether to give preliminary approval to a settlement. *See, e.g., Kirkorian v. Borelli*, 695 F.Supp. 446 (N.D. Cal.1988) (opinion of experienced counsel carries significant weight in court's determination of the reasonableness of the settlement).

Based on these standards, Plaintiffs respectfully submit that for the reasons detailed below, the Court should preliminarily approve the proposed Settlement as fair, reasonable and adequate.

B. The Proposed Settlement Is Fair, Reasonable and Adequate and Should Be Preliminarily Approved -- Liability is Highly Contested and Both Sides Face Significant Challenges in Litigating this Case.

Although both Plaintiffs and Defendants strongly believe in the merits of their respective positions, they are acutely aware of the uncertainties and risks associated with complex class action litigation generally and this case in particular. Plaintiffs and Class Counsel have carefully balanced the risks of continued protracted and contentious litigation, and potentially adverse rulings on class certification and the merits, against the benefits to the Class of the Settlement including the significant Settlement Fund. *Campion Decl.* ¶ 8; *Declaration of James Lattuner in Support of Preliminary Approval ("Lattuner Decl.")* ¶ 8. Similarly, Defendants recognize that if Plaintiffs succeed in both certifying a class and winning on the merits, the potential damages could be substantially higher than the Settlement agreed upon here. Because of the costs and risks to both sides, the Settlement presents a fair and reasonable alternative to continued litigation.

1. The Settlement Benefits The Class Because Defendants Are Accepting the Class Members' Representations About Consent and Thereby Tacitly Waiving Any Defense Based On Consent As To Settlement Class Members.

Defendants are tacitly waiving any defense that could be raised against that a Settlement Class Member consented to receive the calls at issue. Defendants collect

1 on many credit card accounts. Credit card agreements often provide that if the card
 2 is used, the cardmember is agreeing to be robocalled at any number that can be
 3 located for the cardmember. As the assignees of such an account, Defendants could
 4 raise the consent defense in those individual cases. In addition, there are other
 5 ways of obtaining consent.

6 Here, in contrast, and as a benefit to Settlement Class Members, Defendants
 7 are agreeing to take class members at their word when they submit their claims and
 8 thereby acknowledge that they did not provide consent. This removes consent as
 9 an issue and Settlement Class Members recover money or credits without having to
 10 contend with Defendants' consent defense.

11 **2. The Settlement Provides Relief To Settlement Class** 12 **Members for Whom Individual Suits Would Not Be** 13 **Economical.**

14 Among other benefits, this case benefits Settlement Class Members who only
 15 received one or a very few calls. Where a Class Member has just received a handful
 16 of calls, an individual suit is not economically feasible; either no attorney will take
 17 the case or, if an attorney does take the case, most of any recovery would go to
 18 attorneys' fees and costs. Conversely, Settlement Class Members who received a
 significant number of calls are free to opt out of the Settlement Class.

19 Efficiency is a primary focus in determining whether the class action is the
 20 superior method for resolving the controversy presented. *Eovaldi v. First Nat'l*
 21 *Bank*, 57 F.R.D. 545 (N.D. Ill. 1972). The Court is required to determine the best
 22 available method for resolving the controversy in keeping with judicial integrity,
 23 convenience, and economy. *Scholes v. Stone, McGuire & Benjamin*, 143 F.R.D.
 24 181, 189 (N.D. Ill. 1992); *Hurwitz v. R.B. Jones Corp.*, 76 F.R.D. 149 (W.D.Mo.
 25 1977). It is proper for a court, in deciding the "best" available method, to consider
 26 the ". . . inability of the poor or uninformed to enforce their rights, and the
 27 improbability that large numbers of class members would possess the initiative to
 28 litigate individually." *Haynes v. Logan Furniture Mart, Inc.*, 503 F.2d 1161, 1165

(7th Cir. 1974).

In this case there is no better method available for the adjudication of the claims which might be brought by each individual debtor. The vast majority of debtors are undoubtedly unaware that their rights are being violated. In addition, persons from whom Defendants are attempting to collect allegedly delinquent debts are, by definition, unlikely to be able to pay to retain counsel to protect their rights on an individual basis.

The special efficacy of the consumer class action has been noted by courts and is applicable to this case:

A class action permits a large group of claimants to have their claims adjudicated in a single lawsuit. This is particularly important where, as here, a large number of small and medium sized claimants may be involved. In light of the awesome costs of discovery and trial, many of them would not be able to secure relief if class certification were denied

In re Folding Carton Antitrust Litigation, 75 F.R.D. 727, 732 (N.D. Ill. 1977) (citations omitted). Another court noted:

Given the relatively small amount recoverable by each potential litigant, it is unlikely that, absent the class action mechanism, any one individual would pursue his claim, or even be able to retain an attorney willing to bring the action. As Professors Wright, Miller and Kane have discussed, in analyzing consumer protection class actions such as the instant one, 'typically the individual claims are for small amounts, which means that the injured parties would not be able to bear the significant litigation expenses involved in suing a large corporation on an individual basis. These financial barriers may be overcome by permitting the suit to be brought by one or more consumers on behalf of others who are similarly situated.' 7B Wright et al., §1778, at 59.

Lake v. First Nationwide Bank, 156 F.R.D. 615, 628-629 (E.D.Pa 1994).

C. This Settlement With a Value In Excess of \$20 Million Provides a Fair and Substantial Benefit to the Class.

As set forth above in section III. B., Defendants have agreed to pay cash and allocate credits, pay costs of notice and claims administration and attorneys' fees and costs to settle this action. The amount Settlement Class members will directly

1 receive consists of a \$15,000,000 Settlement Fund, divided into a \$2 million Cash
 2 Component and a \$13 million Credit Component. The \$13 million Credit
 3 Component of the Settlement will distributed to members of the Settlement Class
 4 who were called by Defendants and who have accounts with Defendants with a
 5 positive balance. Agreement, § 5.01.

6 Debt forgiveness provides real value to the Class Members. “The courts often
 7 approve class action settlements that employ debt forgiveness and other non-cash
 8 benefits as all or part of the settlement consideration.” *In re Lloyd's Am. Trust Fund*
 9 *Litig.*, 2002 U.S. Dist. LEXIS 22663, 45 (S.D.N.Y. Nov. 26, 2002) (citing *Cullen v.*
 10 *Whitman Medical Corp.*, 197 F.R.D. 136, 143 (E.D. Pa. 2000) (approving
 11 settlement providing cash, forgiveness of indebtedness of class members to
 12 defendants and other non-monetary relief); *Follansbee v. Discover Fin. Serv., Ltd.*,
 13 No. 99 C 3827, 2000 WL 804690, at *5 (N.D. Ill. June 21, 2000) (approving
 14 settlement providing cash and credits usable by some class members to pay down
 15 debt to defendant); *Pigford v. Glickman*, 185 F.R.D. 82, 109 (D. D.C. 1999)
 16 (approving settlement providing cash and forgiveness of debt owned by some class
 17 members), *aff'd*, 340 U.S. App. D.C. 420, 206 F.3d 1212 (D.C. Cir. 2000).

18 This settlement is similar to other class action settlements providing credits
 19 that have been given final approval. *See Couser v. Apria Healthcare, Inc.*, 13-cv-
 20 00035-JVS-RNB, Dkt. No. 45, p. 9 (C.D. Cal. Oct. 27, 2014) (preliminarily
 21 approving TCPA settlement providing for, depending on the circumstances, “a cash
 22 payment, forgiveness of debt owed to Apria, and/or a voucher for future account
 23 balanced with Apria”, given final approval on March 9, 2015); *Gutierrez v.*
 24 *Barclays Group*, 3:10-cv-01012-DMS-BGS (S.D. Cal. March 12, 2012) (TCPA
 25 class action where class members were given an estimated \$100 credit on their
 26 credit card balance with Barclays as part of the settlement); *Pepper v. Midland*
 27 *Credit Management, Inc.*, 37-2011-00088752-CU-BT-CTL (Cal. Superior Ct., San
 28 Diego, Sept. 9, 2013) (final approval of call recording settlement (Cal. Pen. Code §

632) where each class member was to be given up to \$1,000 in debt relief); *Ybarrondo v. NCO Financial Systems, Inc.*, 05-cv-02057-L-JMA (S.D. Cal. Oct. 8, 2009) (final approval of FDCPA class settlement that provided for, in part, a waiver of consumer debt with a face value of \$5.8 million); *Fox v. Asset Acceptance, LLC*, 14-cv-734-GW (FFMx) (C.D. Cal. Aug. 17, 2015) ECF 69 (preliminarily approving settlement of \$800,000 in credits to Defendant's account holders, out of a \$1,000,000 settlement, with a \$200,000 cash component, final approval hearing to be held in Feb. 2016).

It is of course unknown at this time what the exact amount of individual, pro rata relief Class members in the Credit and Cash Component group will receive. Once the claims are filed and evaluated, those numbers will be known and presented at the Final Approval hearing. However, based on historical claims rates for claims in TCPA cases, it is anticipated the claims rate will be between 2% and 5% for the Direct Mail Notice Group. Based upon the 6,156,500 persons in the Direct Mail Notice Group, the pro rata amount of relief based on \$15,000,000 and a 2% claims rate would result in about 123,130 persons receiving approximately \$122 in credits or cash. At a 5% claims rate, it would result in about 307,825 persons receiving approximately \$49.00 in credits or cash. Therefore, the range of expected cash or credits is well within the range received in other TCPA cases, as will be provided at Final Approval. Thus, the amount each Settlement Class member shall receive is fair, reasonable, and adequate given the purposes of the TCPA and the risk, expense, and uncertainty of continued litigation.

The purpose of the TCPA is to protect the privacy interests of residential telephone subscribers by placing restrictions on unsolicited, automated telephone calls. S. REP. NO. 102-178, at 6 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968, 1973. Although the TCPA provides for statutory damages of \$500 for each violation, it is well-settled that a proposed settlement may be acceptable even though it amounts to only a small percentage of the potential recovery that might be

1 available to the class members at trial. *See e.g., National Rural Tele. Coop. v.*
 2 *DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (noting that it is “well settled
 3 law that a proposed settlement may be acceptable even though it amounts to only a
 4 fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*,
 5 225 F.R.D. 436, 460 (E.D. Pa. 2000) (“the fact that a proposed settlement
 6 constitutes a relatively small percentage of the most optimistic estimate does not, in
 7 itself, weigh against the settlement; rather, the percentage should be considered in
 8 light of strength of the claims”); *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036
 9 (N.D. Cal. Jan. 9, 2008) (court-approved settlement amount that was just over 9%
 10 of the maximum potential recovery). At statutory damages of \$500 per violation
 11 for the 41,435,915 cell phone telephone numbers called, Defendants’ potential
 12 damages are in the unreachable tens of billions of dollars.

13 **D. The Settlement Was Reached As the Result of Arms’-Length**
 14 **Negotiation, Without Collusion, With the Assistance of an**
 15 **Experienced Mediator.**

16 The Settlement is the result of intensive arms-length negotiation, including
 17 more than eleven mediation sessions with Judge Herbert Hoffman (Ret.) plus
 18 extensive negotiations between the Parties on their own as well. Agreement, § 1.06.
 19 *Campion Decl.*, ¶ 3; *Lattuner Decl.*, ¶ 3. In connection with the Settlement, Class
 20 Counsel conducted written and oral confirmatory discovery to ascertain the
 21 accuracy of Defendants’ representations in mediation as to the number and identity
 22 of the Settlement Class members and the cell phone numbers called by Defendants.
 23 *Campion Decl.*, ¶¶ 11-13; 21. The Settlement provides for an independent
 24 technology consultant hired by KCC, CompliancePoint, who confirmed that the
 25 telephones numbers on Defendants’ Cell Phone Number List are indeed exclusively
 26 cell phone numbers, and confirmed that the amount of cellphone numbers on the
 27 Cell Phone Number List is 41,720,462. Plaintiffs’ counsel are satisfied that the
 28 information provided by Defendants relating to the number of persons in the

1 Settlement Class and the number of cell phones called is correct, as confirmed by
 2 Defendants under penalty of perjury in confirmatory discovery. *Id.*

3 The parties began settlement negotiations just as responses to formal
 4 discovery were due from both sides and as many depositions of Defendants had
 5 been noticed. A substantial amount of time was required to work out the many
 6 details about the settlement, including data production, payment of claims,
 7 including their amounts, how the Settlement Fund would be allocated, how best to
 8 determine the identify of Class Members, and how best to disseminate notice.
 9 *Campion Decl.*, ¶3. The time and effort spent on settlement negotiations, as well
 10 the time spent with Judge Hoffman in the settlement process, militate in favor of
 11 preliminary approval of the proposed Settlement, as they strongly indicate there
 12 was no collusion. *See In re Wireless Facilities, Inc. Sec. Litig. II*, 253 F.R.D. 607,
 13 610 (S.D. Cal. 2008) (“Settlements that follow sufficient discovery and genuine
 14 arms-length negotiation are presumed fair.”).

15 **E. Experienced Counsel Have Determined That the Settlement**
 16 **Is Appropriate and Fair to the Class.**

17 The Parties are represented by counsel experienced in complex class action
 18 litigation. Co-Lead Counsel have extensive experience in class actions and, in
 19 particular, experience in class actions relating to consumer protection, including the
 20 TCPA. *Campion Decl.*, ¶¶ 24- 32; *Lattuner Decl. Ex. 1*. Counsel for Defendants
 21 similarly have extensive experience based upon a long track record in complex
 22 class actions.⁵ They have vigorously defended Defendants throughout this Action.
 23 Class Counsel believe that under the circumstances, the proposed Settlement is fair,
 24 reasonable and adequate and in the best interests of the Class Members. *Campion*
 25 *Decl.*, ¶ 8; *Lattuner Decl.* ¶ 8.

26 ⁵ DLA Piper’s website states, *inter alia*, that “We regularly represent many of the
 27 world’s leading corporations in putative class actions filed in state and federal
 28 courts nationwide. . . .”

1 **F. The Class Should Be Preliminarily Certified For Settlement**
 2 **Purposes.**

3 Courts have long acknowledged the propriety of certifying classes for
 4 settlement purposes. *See In re Wireless Facilities*, 253 F.R.D. at 610 (“Parties may
 5 settle a class action before class certification and stipulate that a defined class be
 6 conditionally certified for settlement purposes”).

7 **G. The Proposed Method of Class Notice Is Appropriate.**

8 Rule 23(c)(2)(B) provides that, in any case certified under Rule 23(b)(3), the
 9 court must direct the “best notice practicable” under the circumstances to class
 10 members. Rule 23(c)(2)(B) does not require “actual notice” or that a notice be
 11 “actually received.” *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). Notice
 12 need only be given in a manner “reasonably calculated, under all the circumstances,
 13 to apprise interested parties of the pendency of the action and afford them an
 14 opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust*
 15 *Co.*, 339 U.S. 306, 314 (1950). “Adequate notice is critical to court approval of a
 16 class settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025.⁶

17 As *Newberg on Class Actions* § 8:29 (5th ed.) states, publication may be
 18 “used in lieu of individual notice in certain circumstances”, and cites to authorities
 19 recognizing the need to allow publication notice when the names and addresses of
 20 the Class members cannot be reasonably ascertained.⁷

21 ⁶ Defendants have agreed to provide the requisite Class Action Fairness Act
 22 (“CAFA”) Notices pursuant to 28 U.S.C. Section 1715(b) within 10 days of the
 23 filing of this motion and to pay for the costs of those Notices. Agreement, § 9.08.

24 ⁷ *Id.* at Footnote 3: “See, e.g., *Hughes v. Kore of Indiana Enterprise, Inc.*, 731
 25 F.3d 672, 676–77, 86 Fed. R. Serv. 3d 647 (7th Cir. 2013) (“The members of the
 26 class in this case can’t be identified through *reasonable* effort, effort commensurate
 27 with the stakes When reasonable effort would not suffice to identify the class
 28 members, notice by publication, imperfect though it is, may be substituted.”); . . .
 the *Manual for Complex Litigation, Fourth*, § 21.311 (“Publication in magazines,
 newspapers, or trade journals may be necessary if individual class members are not
 identifiable after *reasonable effort* or as a *supplement to other notice efforts.*”); 6A

Pursuant to Fed. R. Civ. P. 23(e)(1)(B), “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal”. Rule 23(c)(2)(B) also sets forth requirements as to the content of the notice. The notice must concisely and clearly state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through counsel if he or she so desires; (v) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on class members under Rule 23(c)(3). Fed. R. Civ. P. 23(c)(2)(B).

Here, as described in detail above in Section III.C., the Settlement Notice Plan (Agreement, Exhibit E), which includes Direct Mail Notice, publication notice, internet banner notice, a press release, and the Formal Q & A Form Notice to be posted on the settlement website, meets all the requirements of Fed. R. Civ. P. 23(c)(2)(B). *See* Agreement, Exhibits B-E and Rosenthal Decl.

The notice program provided by the Agreement was designed to reach the largest possible number of Settlement Class Members as possible. A notice program reaching 75% of the class as here is certainly acceptable.⁸ The Federal Judicial Center, “Judge’s Class Action Notice and Claims Process Checklist and Plain Language Guide”, p. 3, says “it is reasonable to reach between 70-95%” of the class with a combination of direct mail and publication efforts. This plan is

Fed. Proc., L. Ed. § 12:312 (“Publication alone may be sufficient notice to class members under [Rule 23(c)(2)(B)] where notice by publication is the only practical alternative, such as where, in view of the large number of class members, it would be extremely difficult to identify class members for purposes of individual notice or would require more than reasonable effort to identify all class members so as to give individual notice, or where no list of the potential class members is available and no list can be compiled under the particular circumstances.”).

⁸ *In re Motor Fuel Temperature Sales Practices Program*, 279 F.R.D. 598, 618 (D. Kans 2012) (court approved notice plan in an MDL case where print and media notice was estimated to reach 75 % of the class).

1 estimated by KCC to reach approximately 75.2% of likely Settlement Class
 2 members, on average 1.8 times each. *Id.*, pp. 5-6. Of the persons scheduled to
 3 receive Direct Mail Notice, factoring in likely undeliverable postcards, that is
 4 calculated to reach 5,935,582 of the 6,156,500 Settlement Class Members contained
 5 in the Notice List by Direct Mail Notice. *See* Agreement, Exhibit E, “Settlement
 6 Notice Plan”, p 11; Rosenthal Decl. ¶ 28. Thus, the extensive notice plan satisfies
 7 the requirements of due process, is the best notice practicable under the
 8 circumstances, and constitutes sufficient notice.

9 **H. The Court Should Appoint Plaintiffs As The Class**
 10 **Representatives and Co-Lead Counsel As Class Counsel.**

11 “[T]wo criteria for determining the adequacy of representation have been
 12 recognized. First, the named representatives must appear able to prosecute the
 13 action vigorously through qualified counsel, and second, the representatives must
 14 not have antagonistic or conflicting interests with the unnamed members of the
 15 class.” *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).
 16 The adequacy of representation requirement is met here. Plaintiffs seek to have the
 17 Law Offices of Douglas J. Campion, APC and Edelman, Combs, Lattuner &
 18 Goodwin, LLC, who have been acting as interim co-lead counsel as per this Court’s
 19 Order (Dkt. No. 21), be confirmed as co-lead counsel to facilitate the settlement.
 20 Plaintiffs also seek to have the Law Office of David Schafer, who has been acting
 21 as interim liaison counsel per the Court’s same Order, be appointed liaison counsel
 22 for all purposes related to the Settlement. Defendants have no objection to Interim
 23 Co-Lead Counsel continuing in that role. Agreement, § 4.01. As recognized by the
 24 Court in its Order, Dkt. No. 21, Plaintiffs’ counsel all have extensive experience
 25 sufficient to be appointed as Class Counsel here. Campion Decl., ¶¶ 24-32;
 26 Lattuner Decl., Ex. 1. In addition, Plaintiffs request that the three Plaintiffs,
 27 Christopher Robinson, Eduardo Tovar, and Dave Scardina, be appointed as the
 28

1 Settlement Class Representatives. Plaintiffs understand the obligations of serving as
 2 class representatives, have adequately represented the interests of the putative class,
 3 and have retained experienced counsel. *Campion Decl.*, ¶35; *Lattuner Decl.*, ¶ 27.
 4 Plaintiffs *Scardina Decl.* ¶ 3; *Robinson Decl.* ¶ 8; *Tovar Decl.* ¶ 3. Plaintiffs have
 5 no interests that are antagonistic or in conflict with the Settlement Class members.
 6 *Campion Decl.*, ¶¶33-34; *Lattuner Decl.*, ¶ 25; *Scardina Decl.* ¶ 6; *Robinson Decl.*
 7 ¶ 7; *Tovar Decl.* ¶ 6. Plaintiffs and the Settlement Class Members seek the same
 8 relief, *i.e.*, money damages for Defendants' alleged unlawful actions. Considering
 9 the identity of claims, there is no potential for conflicting interests in this action.

10 **I. The Court Should Appoint KCC as the Claims**
 11 **Administrator.**

12 The Parties have agreed upon, and request that the Court appoint, KCC to
 13 serve as the Claims Administrator. Agreement, § 8.01. KCC specializes in
 14 providing administrative services in class action litigation, and has extensive
 15 experience in administering consumer protection and privacy class action
 16 settlements. *Campion Decl.*, ¶ 18; *Rosenthal Decl.* ¶¶ 6-11.

17 **J. A Final Approval Hearing Should Be Scheduled.**

18 The last step in the settlement approval process is the formal fairness or final
 19 approval hearing. The Parties request that the hearing be held not before 230 days
 20 after the date of entry of the Preliminary Approval Order to allow sufficient time
 21 for providing CAFA Notice, direct mail and publication notice, the additional
 22 mailing of the credit notice to the persons receiving credits to their accounts, and
 23 the 90 day claims period.

24 **IV. CONCLUSION**

25 For all the foregoing reasons, the Parties respectfully request that the Court
 26 enter an order preliminarily approving the proposed Settlement.

27 Respectfully submitted,

28 Date: November 6, 2015

By: /s/ Douglas J. Campion

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